

United States Court of Appeals

United States Courts

FIFTH CIRCUIT
OFFICE OF THE CLERK

Southern District of Texas

LYLE W. CAYCE
CLERK

March 06, 2020

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

David J. Bradley, Clerk of Court

March 06, 2020

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 20-20035 Natl Shipg Co Saudi Arabia v. Valero Marketing
& Supply Co.
USDC No. 4:19-CV-1096

The court has granted the motion to supplement the record in this case. The originating court is requested to provide us with a supplemental electronic record consisting of the documents outlined in the attached motion. Counsel is reminded that any citations to these documents must cite to the supplemental electronic record.

Sincerely,

LYLE W. CAYCE, Clerk

Jann Wynne

By: Jann M. Wynne, Deputy Clerk
504-310-7688

Attachment

Mr. David J. Bradley, Clerk
Mr. Zachary Cain
Mr. Keith Bernard Letourneau
Mr. Stephen Edward Scheve
Mr. Robert Alan York

Case No. 20-20035

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

THE NATIONAL SHIPPING COMPANY OF SAUDI ARABIA,

Plaintiff

v.

VALERO MARKETING AND SUPPLY COMPANY,

Defendant-Third Party Plaintiff - Appellant

v.

TRAFIGURA TRADING LLC,

Third Party Defendant - Appellee

On Appeal from the United States District Court,
Southern District of Texas–Houston Division
Civil Action No. 4:19-cv-1096; Chief Judge Lee H. Rosenthal, Presiding

**APPELLANT’S UNOPPOSED MOTION
TO SUPPLEMENT THE RECORD**

*For immediate consideration by the Clerk
pursuant to Circuit Rule 27.1, 27.1.11 and 27.4*

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JEREMY A. HERSCHAFT
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Counsel for Appellant

Following the filing of the notice of appeal, the electronic record on appeal was prepared by the clerk, with filings through January 27, 2020 being included. On March 3, 2020, the district court issued the attached order, which provided in pertinent part as follows:

The court grants Valero's motion for clarification. There is no Rule 14(c) tender that overcomes the arbitration and forum-selection clauses at issue in this case. As a result, Trafigura is no longer a party to this litigation.

ARGUMENT AND AUTHORITY

The federal appellate rules permit supplementation of the record on appeal “[i]f anything material to either party is omitted from or misstated in the record...” Fed. R. App. P. 10(e)(2)(C). Further, “[a]ppellate courts have the inherent equitable authority to supplement the record on appeal.” *United States ex rel. Minna Ree Winer Children's Class Trust v. Regions Bank of La.*, 110 F.3d 794, No. 96-30581, at *3 (5th Cir. Mar. 13, 1997) (unpublished) (citing *Ross v. Kemp*, 785 F.2d 1467, 1474-75 (11th Cir. 1986)); see also *Gibson v. Blackburn*, 744 F.2d 403, 405 n.3 (5th Cir. 1984).

Here, the district court's recent order is directly relevant to the issue presently on appeal and was not available at the time the record was prepared. Its inclusion in the record would not change any facts or arguments that will be raised by the parties to the appeal – instead, it only removes any ambiguity of intent from the district court's opinion that is the subject of this appeal. This clarification would be of value

to the Court of Appeals as it considers the merits of the appeal.

REQUEST FOR IMMEDIATE CONSIDERATION

This motion does not qualify as an emergency under the terms of Circuit Rule 27.3. However, Valero's appellate brief is due for filing on March 16, 2020, and Valero submits that it would be best if the record on appeal was supplemented prior to that time so that it may properly cite to the full (supplemented) record on appeal. See Circuit Rule 27.4. Valero also notes that Appellate Rule 27(b) permits action on a procedural motion "at any time" and that Circuit Rule 27.1.11 identifies supplementation of the record as a procedural motion which the Clerk is authorized to rule upon.

CONCLUSION

For the foregoing reasons, Defendant/Third-Party Plaintiff/Appellant Valero Marketing and Supply Company respectfully requests that the record on appeal be supplemented to include the district court's order dated March 3, 2020.

Houston, Texas

March 5, 2020

Respectfully submitted,

BLANK ROME LLP

/s/ Keith B. Letourneau

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CERTIFICATE OF SERVICE

I certify that I filed the foregoing Motion on March 5, 2020, electronically, and that a true and correct copy of the foregoing will be served on counsel of record via the Electronic Case Filing System of the United States Court of Appeals for the Fifth Circuit.

/s/ Keith B. Letourneau

Keith B. Letourneau

CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limitations of FED. R. APP. P. 32(g) and FED. R. APP. P. 27(d)(2) because it contains only 597 words excluding the exempted portions of the motion.

2. This motion complies with the typeface requirement of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because it has been prepared in proportionally spaced typeface using Word 2016 in 14-point font, Times New Roman.

/s/ Keith B. Letourneau

Keith B. Letourneau